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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15 C.M., on her own behalf and on behalf of
16 her minor child, B.M.; L.G., on her own
17 behalf and on behalf of her minor child,
18 B.G.; M.R., on her own behalf and on
19 behalf of her minor child, J.R.; O.A., on her
20 own behalf and on behalf of her minor
child, L.A.; and V.C., on her own behalf
and on behalf of her minor child, G.A.,

21 Plaintiffs,

22 v.

23 United States of America,
24 Defendant.

No. 2:19-CV-05217-SRB

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26
27 A.P.F. on his own behalf and on behalf of
28 his minor child, O.B.; J.V.S., on his own

No. 2:20-CV-00065-SRB

1 behalf and on behalf of his minor child
2 H.Y.; J.D.G. on his own behalf and on
3 behalf of his minor child, M.G.; H.P.M. on
4 his own behalf and on behalf of his minor
5 child, A.D.; M.C.L. on his own behalf and
6 on behalf of his minor child, A.J.; and
7 R.Z.G. on his own half and on behalf of his
8 minor child, B.P.,

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11 Plaintiffs,

12 v.

13 United States of America,

14 Defendant.

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DECLARATION OF G. BRADLEY WEINSHEIMER

I, G. Bradley Weinsheimer, do hereby state and declare as follows:

1. I am an Associate Deputy Attorney General for the United States Department of Justice ("Department"). I serve as the highest-ranking career official in the Department. I have held this position since July 2018. I have worked at the Department since June 1991, serving in a variety of capacities both in the U.S. Attorney's Office for the District of Columbia and at Department headquarters. I have been a member of the Senior Executive Service since 2011. As an Associate Deputy Attorney General, my responsibilities include, among other things, advising the Attorney General and Deputy Attorney General and representing their interests on behalf of the Department on a variety of matters, including as to the release of Department documents and the assertion of privileges.

2. I base this declaration on my personal knowledge; information made available to me in the performance of my official duties, including discussions with others in the Department concerning this litigation and the underlying documents and events; and my understanding of the issues being litigated in the above-captioned cases. I do not have personal knowledge of the events that gave rise to this litigation.

1 3. I have personally reviewed each of the documents from the December 31,
2 2020 and January 15, 2021 productions over which the Department is asserting the
3 deliberative process privilege as of April 9, 2021. I hereby assert, on behalf of the
4 Department, the deliberative process privilege with respect to the documents in the April
5 9, 2021 re-production as described in paragraphs 10 – 12 of this Declaration and listed in
6 the chart attached to this Declaration.¹ See Attachment 1. The Department is not asserting
7 the deliberative process privilege for any other documents previously withheld, in whole
8 or in part, from the December 31, 2020 and January 15, 2021 productions.

9 4. I understand that the government also is asserting other privileges, such as
10 the Office of the President's assertion of the presidential communications privilege, with
11 respect to documents re-produced on April 9, 2021. The fact that my assertion is limited
12 to the deliberative process privilege is in no way intended to suggest that the documents
13 and information cited herein, or other documents, are not protected by other privileges.

14 5. Open and honest exchange of ideas and opinions among Department
15 employees is necessary to assist final decisionmakers in ensuring that the Department's
16 mission of enforcing federal law and protecting the interests of the United States is
17 executed. Release of the redacted information in the documents described in this
18 Declaration and cited in the attached chart could chill this exchange and impede the
19 Department's decisionmaking process. This is especially true where, as here, the opinions,
20 proposals, and recommendations of Department employees may concern controversial
21 approaches to the government's border security and immigration enforcement and the
22 Department's prosecution priorities. If Department employees are aware that their
23 opinions, deliberations, and recommendations may be subject to public disclosure—and
24 the scrutiny and criticism which may follow—the candor of their views could be chilled.
25 This is especially true when those opinions, deliberations, and recommendations are taken
26 out of context or not understood in the full context in which they were made or intended.

27 ¹ The chart attached to this Declaration contains three columns reflecting the three
28 categories of documents described in paragraphs 10 – 12 of this Declaration. Because
certain documents fall within more than one of the three categories, those documents
appear in multiple columns on the chart.

1 It is thus vital that predecisional and deliberative communications such as those contained
 2 or reflected in the documents referenced herein be protected from disclosure based on the
 3 deliberative process privilege.

4 6. In order to create a coordinated and cohesive Executive Branch policy,
 5 Department employees routinely communicate not only with each other, but also with
 6 officials in other federal agencies and in the White House. It is crucial that these
 7 predecisional and deliberative communications be protected, as informed and frank
 8 discourse among federal governmental officials ensures that ideas, even those that are
 9 unpopular, are properly considered by final decisionmakers.

10 7. Notably, many of the documents described herein and cited in the attached
 11 chart contain predecisional and deliberative information regarding the consideration of the
 12 federal government's broader immigration and border security policies that is unrelated or,
 13 at most peripheral, to Plaintiffs' claims in this litigation. Some of this information
 14 concerns policy decisions that were proposed and discussed, but never implemented.
 15 Allowing Plaintiffs access to this irrelevant, sensitive material would be detrimental to
 16 honest and open inter- and intra-agency discussions.

17 **The Zero Tolerance Policy**

18 8. On April 6, 2018, now-former Attorney General Jefferson Sessions issued a
 19 memorandum directed to all federal prosecutors along the Southwest border entitled "Zero
 20 Tolerance of Offenses Under 8 U.S.C. § 1325(a)" ("Zero Tolerance Memorandum"). *See*
 21 U.S. Department of Justice, News Release: Attorney General Announces Zero-Tolerance
 22 Policy for Criminal Illegal Entry (April 6, 2018), DOJ 18-417, 2018 WL 1666622
 23 (hereinafter referred to as "Zero Tolerance Memorandum"). The Zero Tolerance
 24 Memorandum instructed federal prosecutors along the Southwest border "to the extent
 25 practicable, and in consultation with DHS-- to adopt immediately a zero-tolerance policy
 26 for all offenses referred for prosecution under section 1325(a)."

27 **Documents**

28 9. On behalf of the Department of Justice, I formally invoke the deliberative
 process privilege over a total of 399 documents in the April 9, 2021 re-production. Many

1 of these documents are duplicates or close variants of the same documents. Two privilege
 2 logs associated with the April 9, 2021 production are attached hereto and reflect the
 3 documents for which the Department is asserting the deliberative process privilege. *See*
 4 Attachments 2 and 3. All of the documents for which the deliberative process privilege is
 5 claimed fall within at least one of the three categories below.

6 **10. Draft Reports and Executive Orders**

7 Documents within this category are draft reports, including, among others, the
 8 “Report on Ending ‘Catch and Release’ at the Border of the United States”; the “Report on
 9 Securing the Southern Border of the United States”; and Executive Order 13841,
 10 “Affording Congress an Opportunity to Address Family Separation”, along with
 11 corresponding e-mail discussions.

12 The documents are predecisional for two reasons. First, because the documents are
 13 drafts—many of which contain redlined edits and comments throughout—the documents
 14 by their very nature cannot be final and do not reflect an ultimate agency decision. Rather,
 15 disclosure of the documents would reveal the thought processes of individual agency
 16 employees. Second, the draft documents contain suggestions and recommendations from
 17 agency staff regarding the implementation of a broader immigration and border security
 18 agenda, including, for example, proposed changes to asylum law, which are, at most,
 19 peripheral to Plaintiffs’ claims in this litigation. In particular, drafts of the Executive
 20 Order are predecisional to its issuance on June 20, 2018 and President Trump’s statement
 21 that it was the “policy of this Administration to maintain family unity, including by
 22 detaining alien families together where appropriate and consistent with law and available
 23 resources.” E.O. 13841 § 1. Based upon my review and to my understanding, these
 24 documents contain Department employees’ immigration and border security views and
 25 policy recommendations, offered to assist the heads of federal agencies, or the President
 26 himself, in their decisionmaking process.

27 Additionally, these documents are deliberative. In these communications, officials
 28 in the Department and other federal agencies exchanged opinions and proposals, freely
 critiquing and debating one another’s suggestions, as part of their collective effort to

1 recommend specific language in the reports and Executive Order that would be provided
 2 to and decided upon by heads of agency or the President. Releasing these documents
 3 could chill the frank exchange of ideas among Department employees, and those of other
 4 federal agencies, and impede ultimate Department decisionmaking, if their input may be
 5 subject to disclosure. Here, the exchange of opinions and debates among Department and
 6 other agency officials was to assist decisionmakers with difficult decisions regarding the
 7 creation and implementation of border security and immigration policies.

8 The documents in this category that are subject to my assertion of the deliberative
 9 process privilege are listed in the attached chart at Column A. *See Attachment 1.*

10 **11. Draft Substantive Meeting Agendas and Meeting Summaries**

11 Documents within this category include draft substantive meeting agendas,
 12 substantive meeting summaries, and corresponding e-mails containing or reflecting the
 13 same. These documents were created for meetings of agency senior officials, including
 14 often the Attorney General and the Secretary of Homeland Security, and White House
 15 advisors. Releasing these documents could chill the frank exchange of ideas and options
 16 among Department of Justice and other executive branch employees intended to assist the
 17 ultimate agency decisionmakers in formulating agency policy.

18 The draft meeting agendas are predecisional as they reflect potential topics of
 19 discussion at the meetings. Many of the agendas include the advice and recommendations
 20 of Department employees regarding topics of discussion for top Department officials,
 21 including Attorney General Sessions or former-Deputy Attorney General Rod Rosenstein.
 22 As a general matter, information contained within draft meeting agendas is subject to
 23 change. As such, these draft documents do not reflect final decisions.

24 Additionally, the meeting summaries and related e-mail discussions memorialize
 25 sometimes in detail the topics covered during the meetings, including the discussion and
 26 debate that occurred among the senior agency officials or White House advisors.
 27 Documents in the category include policy proposals that the meeting attendees and their
 28 staff discussed, making the documents' contents predecisional. Often, the topics discussed

1 at the meetings, and reflected in the documents, are wholly unrelated to Plaintiffs' claims
2 in this litigation.

3 Like the other documents cited in this Declaration, disclosure of this material could
4 chill the frank exchange of ideas among Department employees pertaining to complex and
5 sensitive agency policy decisions. For the same reasons stated in paragraph 10 herein, if
6 Department employees, and those of other federal agencies, are aware that their opinions,
7 recommendations, and internal debates may be subject to disclosure, the ability of agency
8 and White House officials to freely solicit and receive the unvarnished opinions and
9 recommendations necessary for informed decisionmaking would be impeded.

10 The documents in this category that are subject to my assertion of the deliberative
11 process privilege are listed in the attached chart at Column B. *See* Attachment 1.

12 **12. Documents Relating to the Implementation of the Zero Tolerance Policy**

13 This category includes e-mail threads and their attachments, and other documents
14 relating to the implementation of the Zero Tolerance Policy. Upon my review of each of
15 the documents in this category, I have determined that while they are not predecisional to
16 the creation of the Zero Tolerance Memorandum, they are predecisional to various
17 subsequent policy decisions necessary to implement the Zero Tolerance Memorandum or
18 other policy decisions concerning border security and immigration.

19 These documents are predecisional to policy decisions made after issuance of the
20 Zero Tolerance Memorandum, including budgeting and funding necessary to execute a
21 "zero tolerance" enforcement approach to certain criminal immigration offenses, waiver
22 provisions in plea agreements, and consideration of plans for reunification of families
23 separated as a result of the federal government's immigration policies. These post-Zero
24 Tolerance Memorandum policy decisions, like the overwhelming majority of all border
25 security and immigration policies, necessarily required coordination among the
26 components of many federal agencies, including the Department of Homeland Security,
27 Immigration and Customs Enforcement, Customs and Border Protection, the Department
28 of Health and Human Services, and, at times, the White House. Officials from these
agencies and components regularly communicated and collaborated to implement the Zero

1 Tolerance Policy and other border security and immigration policies. The e-mail threads
 2 in this category contain or reflect views, recommendations, and debate, both internal to the
 3 Department of Justice and among the Department and other federal agencies, which was
 4 used to inform and assist agency decisionmakers. These documents are predecisional to
 5 the various agency policy decisions necessary to implement the Zero Tolerance Policy and
 6 other border security and immigration policies.

7 Further, for the reasons provided in paragraphs 10 and 11 in this Declaration, the
 8 redacted information in these documents contains or reflects the Department deliberative
 9 process. Disclosure of the redacted portion of these documents would hinder the
 10 Department's decisionmaking process because employees may become reluctant to engage
 11 in internal debates and disagreements—particularly on decisions of final decisionmakers
 12 of which some may later disapprove—that are critical to informed decisionmaking if they
 13 believe their communications may later be revealed. Thus, senior Department officials'
 14 ability to solicit and receive frank and valuable analysis and recommendations would be
 15 impeded and, in turn, the ultimate agency decisionmaker would be deprived of candid and
 16 valuable advice.

17 The documents in this category that are subject to my assertion of the deliberative
 18 process privilege are listed in the attached chart at Column C. *See* Attachment 1.

19 13. The redacted information in the documents described in paragraphs 10 – 12
 20 in this Declaration and cited in the chart attached to this Declaration, is predecisional and
 21 deliberative. Accordingly, the redacted information is of the very sort the deliberative
 22 process privilege was intended to protect from disclosure.

23 I declare under penalty of perjury that the foregoing is true and correct to the best of
 24 my knowledge and belief.

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G. Bradley Weinsheimer
 28 Associate Deputy Attorney General